

SUPPLEMENT
TEST & DEMO CLOUD SERVICES TERMS AND CONDITIONS
FOR PREMIER & SELECT(+) PARTNERS

By entering into a separate Order Form between Supplier and Partner, Partner agrees to comply with the terms and conditions set forth herein which are in addition to the terms stated in the Order Form and the Partner Agreement regarding the use of the Cloud Services as identified in the Order Form for Test and Demo purposes as specified below Software AG ("**Trial Cloud Services**"). In order to obtain Cloud Services, Partner must request an Order Form from Software AG, either through the Partner Hub or by contacting partnersupportdesk@softwareag.com. The Cloud Services are provided on a limited term basis as stated in the request form but in no event shall the term be greater than 12 months. Any defined terms used in this Supplement that are not defined herein are based on the definitions set forth in the Partner Agreement. In the event of any conflict, the following order of precedence shall apply:

- a) Order Form and its corresponding Data Processing Agreement,
- b) Supplement
- c) Partner Agreement

DEFINITIONS	
Agreement	means jointly the Order Form, this Supplement and the Partner Agreement
Partner Agreement	means the PartnerConnect Program Agreement as concluded between Software AG and Partner
Partner	means Select+ resp. Premier Partner
Trial Cloud Services	means the Cloud Services as identified in each Order Form, which is to be separately concluded.
Test & Demo Use/Purposes	means the scope of usage as specified under section 1 of this Supplement

1 USE OF SERVICES

- .1.1 **Provision of Cloud Services:** Supplier grants Partner a non-exclusive, non-transferable, non-sublicensable right to access and use the Supplier web-based products and services identified in an Order Form ("**Trial Cloud Services**"), including the then current version of any user manuals and operating instructions generally provided with the Cloud Services (collectively, "**Documentation**"), for the term set out in the Order Form ("**Cloud Services Term**"). Partner may use the Cloud Services subject to the terms of this Agreement and solely for
- a) evaluation and testing purposes only and/or solely as part of a proof of concept undertaken either by Supplier or Partner itself (**Test Use**) and
 - b) in the Territory solely for the purpose of conducting demonstrations to potential leads, evaluation, quality verification, testing connectivity with Partner's own products ("**Demo Use**")
- and not further or otherwise.
- Partner will not receive a copy of any programs listed in the Order Form other than for temporary download of plug-ins or fat clients (which will be deemed part of the Cloud Services) as described in the applicable Order Form. "**Users**" of the Cloud Services mean employees or contractors of Partner who are authorized by Partner in accordance with the Agreement to access the Cloud Services using Partner's account credentials ("**Credentials**"). Partner is solely responsible for all User use and access to the Cloud Services and the security of any Credentials and will immediately report to Supplier any suspected unauthorized use of the Cloud Services or Credentials.
- .1.2 **Restrictions:** Partner will comply with all laws and regulations applicable to Partner and to Partner's use of the Cloud Services. Partner will not, or permit or cause any third party to:
- (a) use the Cloud Services other than expressly authorized by, and in accordance with the usage terms of, this Agreement;
 - (b) license, sub-license, sell, rent, lease, transfer, assign, distribute, outsource, permit time sharing or service bureau use, or otherwise commercially exploit or make the Cloud Services available to any third party, other than as expressly permitted by this Agreement and by international export laws and regulations;
 - (c) disassemble, reverse engineer, reverse compile, translate, modify, adapt, alter, copy or create derivative works from any products or services provided with the Cloud Services except to the extent permitted by applicable law;
 - (d) interfere with or disrupt the integrity or performance of the Cloud Services or the data contained therein in any way, including but not limited to: (i) conducting penetration testing in multi-tenant environments; (ii) conducting penetration tests in single-tenant environments without the Supplier's prior written consent; (iii) attempting to gain unauthorized access to the Cloud Services or their related systems or networks; or (iv) storing or transmitting a virus or other malicious code through the Cloud Services;
 - (e) disseminate performance-related information relating to the Cloud Services;
 - (f) use the Cloud Services to store or transmit infringing, libelous, offensive, unlawful or tortious material; or
 - (g) store or process any personal data of the following types: information on a person's racial or ethnic origin, political opinions, religious or philosophical convictions, union membership, health (HITECH - Health Information Technology for Economic and Clinical Health Act & HIPAA - Health Insurance Portability and Accountability Act), sex life, concerning bank or credit card accounts (PCI DSS - Payment Card Industry Data Security Standard) comprising but not limited to data according to GDPR Art. 9 No. 1.
- .1.3 **Service Level:** Supplier will use commercially reasonable efforts to make the Cloud Services accessible to Partner, subject to the availability of third party infrastructure, required and emergency maintenance, availability of third party networks and communications facilities and force majeure events. The Cloud Services are hosted on a shared third-party infrastructure environment as set forth in the applicable Order Form.
- .1.4 **Reservation of Rights:** Supplier owns all intellectual property rights in and to the Cloud Services, Documentation and all related materials and derivative works thereof. There is no transfer or assignment by Supplier of any ownership right and Supplier reserves all rights not expressly granted under this Agreement.

2 PARTNER INFORMATION

- 2.1 **Operational Data; Feedback:** Supplier will automatically collect information associated with Partner's access and use of the Cloud Services, including, without limitation application telemetry, IP addresses, IP configurations, stored sessions, open ports, Credentials, network metadata, and device operating system, status, version and configuration (collectively "**Operational Data**"). Supplier may use the Operational Data to monitor, analyze, develop, support or improve the performance of the Cloud Services. Partner grants to Supplier a worldwide, perpetual, irrevocable license to use and commercialize any suggestions, enhancement, requests, recommendations, corrections or other feedback provided by Partner relating to the Cloud Services.
- 2.2 **Partner Data:** With the exception of Operational Data, Partner owns all content, information, materials and intellectual property provided by Partner in connection with Partner's use of the Cloud Services ("**Partner Data**"). Partner is solely responsible for: (i) its provision and use of Partner Data with the Cloud Services; (ii) the accuracy, quality and content of the Partner Data; (iii) assessing the Cloud Services suitability for Partner's intended use; and (iv) obtaining all necessary rights, consents and permissions. Partner will comply with all applicable laws, in its provision and use of Partner Data in connection with the Cloud Services. Partner grants Supplier a worldwide, irrevocable, non-transferable, non-assignable (except as permitted under this Agreement), sub-licensable, non-exclusive license to access, retrieve, store, copy, display, distribute, transmit and otherwise use Partner Data associated with the Cloud Services as follows:
- (a) in connection with maintaining, providing and/or making available the Cloud Services; and
 - (b) as reasonably required in order to cooperate with legitimate governmental requests, subpoenas or court orders provided that Supplier gives Partner reasonable notice of the demand to allow Partner to seek a protective order or other appropriate remedy unless Supplier is legally prohibited from doing so.
- 2.3 **Data Protection Agreement:** The obligations of the parties in connection with the processing of any data that qualifies as personal data according to art. 4 no. 1 of the General Data Protection Regulation ("**Personal Data**") including the applicable technical and organizational measures that supplier is required to implement and maintain to protect Personal Data, will be as set out in the data processing agreement entered into between the parties together with the Order Form ("**Data Processing Agreement**").
- 2.4 **Privacy Notice:** Supplier will collect and process any Operational Data that qualifies as Personal Data in accordance with its then current Privacy Notice. Supplier may change its Privacy Notice from time to time by posting a new version at https://www.softwareag.com/corporate/cloud_privacy_policy.
- 2.5 **Security:** Supplier will maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Partner Data. Supplier will comply with its then current Cloud Information Security Policy as amended from time to time and available on request (subject to a written confidentiality agreement between the Parties).

3 CONFIDENTIALITY

- 3.1 **Confidential Information:** Each Party will have access to confidential or nonpublic information ("**Confidential Information**") of the other Party or third parties. Confidential Information disclosed is proprietary and will remain the sole property of the disclosing Party or such third parties. The Cloud Services and Documentation are Confidential Information of Supplier. Confidential Information will not include information that: (i) is or becomes publicly available or enters the public domain through no fault of the recipient; (ii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations; (iii) is already in the recipient's possession free of any confidentiality obligations at the time of disclosure; (iv) is independently developed by the recipient; or (v) is approved, in writing, for release or disclosure without restriction.
- 3.2 **Confidentiality Obligation:** Each Party agrees to: (i) use Confidential Information only for the purposes of this Agreement; (ii) hold Confidential Information in confidence and protect it from dissemination to, and use by, any third party; (iii) not to create any derivative work from Confidential Information; (iv) restrict access to Confidential Information to its employees, affiliates, agents, and contractors who need access to such Confidential Information and who have agreed in writing to treat such Confidential Information in accordance with this Agreement; and (v) return or destroy all Confidential Information of the other Party upon termination or expiration of this Agreement. The recipient may make and retain copies of Confidential Information as required by law and/or regulatory requirement, or that are automatically stored by backup systems and which are not accessible in the normal course of business. If the recipient is required by law or valid legal order to disclose Confidential Information, the recipient will, unless prohibited by law, give reasonable notice of such demand to allow the disclosing Party to seek a protective order or other remedy.

4 WARRANTY DISCLAIMER

- 4.1 **Warranty Disclaimer:** The Partner acknowledges that the Cloud Services are provided "as is" without any warranty whatsoever solely for the Partner's evaluation. THE SUPPLIER DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

5 IPR INDEMNITY

- 5.1 **Indemnity:** Supplier shall indemnify, defend, and hold Partner harmless from any action brought by a third-party against Partner to the extent that it is proximately caused by an allegation that the Cloud Services provided under this Agreement have infringed an intellectual property right or trade secret registered in the country of Supplier's residence, and pay those damages or costs related to the settlement of such action or finally awarded against Partner in such action, including but not limited to reasonable attorneys' fees, provided that Partner:
- (a) promptly notifies Supplier of any such action; and
 - (b) gives Supplier full authority, information, and assistance to defend such claim; and
 - (c) gives Supplier sole control of the defense of such claim and all negotiations for the compromise or settlement of such claim.
- 5.2 **Exceptions:** Supplier will have no indemnity obligation nor other liability under this Agreement to the extent the claim is based upon: (i) Cloud Services modified by anyone other than Supplier; (ii) use of other than the then-current release of any fat clients or plug-ins provided to Partner for the purposes of accessing and using the Cloud Services, if the infringement could have been avoided by use of the then-current release and such current release has been made available to Partner; or (iii) use of the Cloud Services in conjunction with other software, hardware or Partner data, where such use gave rise to the infringement claim.
- 5.3 **Remedy:** If Supplier determines that the Cloud Services are likely to be the subject of a claim of infringement, Supplier may, in its sole discretion: (i) replace or modify the Cloud Services; (ii) procure the right for Partner to continue using the Cloud Services; or (iii) terminate access to the Cloud Services and refund to Partner a pro-rated portion of the applicable unused Cloud Services fees (if any). THIS SECTION STATES SUPPLIER'S EXCLUSIVE LIABILITY AND PARTNER'S EXCLUSIVE REMEDY REGARDING ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT BY THE CLOUD SERVICES OR ANY MATERIALS OR SERVICES PROVIDED UNDER THIS AGREEMENT.
- 5.4 **Partner Indemnity:** Partner will indemnify Supplier from any third party action against Supplier to the extent proximately based upon an allegation arising from: (i) any access to or use of Partner Data with the Cloud Services; or (ii) modification or use of the Cloud Services with any Partner applications, provided that Supplier (a) promptly notifies Partner of any such action; (b) gives Partner full authority, information, and assistance to defend such claim; and (c) gives Partner sole control of the defense of such claim and all negotiations for the compromise or settlement of such claim.

6 LIMITATION OF LIABILITY

.6.1 **Limitation of Liability:** TO THE EXTENT PERMITTED BY LAW NEITHER SOFTWARE AG, ITS SUBSIDIARIES OR AFFILIATES NOR ANY OF ITS LICENSORS SHALL BE LIABLE FOR ANY DAMAGES CAUSED BY THE USE OF THE CLOUD SERVICES OR ANY LOSS OR DAMAGE HEREUNDER, INCLUDING WITHOUT LIMITATION ANY INACCURACY OF DATA, LOSS OF PROFITS OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7 **USAGE LIMITS**

.7.1 **Usage Limits:** Partner will ensure that its usage of the Cloud Services does not exceed the usage terms set forth in this Agreement and will be liable for any excess usage at Supplier's then current rates during the period in which usages exceeds the licensed amount.

8 **TERMINATION**

.8.1 **Termination:** The Partner's right to use the Cloud Services will automatically terminate as of the date set forth in this Agreement or, if not otherwise specified herein, thirty (30) days after the date that the Partner is first permitted access to the Cloud Services by the Supplier. Notwithstanding the foregoing, Supplier may immediately terminate the Agreement upon written notice to the Partner. Upon any termination (howsoever arising) or expiry, the Partner shall cease using the Cloud Services. If requested by Supplier, the Partner shall send a letter certifying that the provisions of this clause have been adhered to. All disclaimers of warranties, limitations of liability and provisions for the protection of Supplier's proprietary rights in the Cloud Services as set forth herein shall survive any termination of the Agreement.

9 **EXPORT CONTROL**

.9.1 **Export Control:** Partner may not download, provide access to, and otherwise export or re-export the Cloud Services, in whole or in part, except as explicitly allowed in this Agreement and in compliance with all applicable laws, regulations and restrictions (whether international, federal, state, local, or provincial). Supplier reserves the right to not perform any obligation under the Agreement if prohibited by such export control laws, regulations or restrictions.